

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF SOUTH DAKOTA**

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COUNTY OF CHARLES MIX,)
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 Plaintiff,) Case. No. 3:10-cv-3012-RAL
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 v.)
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)
)
 UNITED STATES DEPARTMENT OF)
 THE INTERIOR, et al.)
)
)
 Defendants.)
)
)

**REPLY IN SUPPORT OF THE UNITED STATES'S MOTION TO DISMISS
OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT
AND OPPOSITION TO PLAINTIFF's MOTION FOR SUMMARY JUDGMENT**

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**Reply in Support of the United States's Motion to Dismiss
or in the Alternative for Summary Judgment**

Defendants (collectively, “the United States”) hereby submit this Reply in support of their Motion to Dismiss or in the Alternative for Summary Judgment. This brief also serves as Opposition to Plaintiff’s Motion for Summary Judgment.

Plaintiff’s Brief, Dkt. No. 11, serves as both support for its motion for summary judgment and opposition to the United States’s motion. The “argument” section of the brief consists primarily of conclusory statements that the United States’s arguments are without merit. In this reply, Defendants will briefly address the issue of whether the Bureau of Indian Affairs (“BIA”) lacked jurisdiction over the Yankton Sioux Tribe (Tribe’s) land-into-trust application because the Tribe’s Business and Claims Committee (“Committee”) lacked authority under tribal law to submit the application to the BIA.

Article IV, § 1 of the Tribe’s Amended Bylaws provides:

[t]he Committee shall have the authority to investigate and transact all Tribal business of a routine nature and Indian legislation, including Industry, Sanitation, Housing, Redevelopment and etc., and shall also act in the capacity of a liaison delegation between the Tribe and Federal, State, and local governments, and such other agencies or parties that may offer opportunities for the Tribe.

See State of S. Dak., County of Charles Mix, & City of Wagner v. Acting Great Plains Reg’l Dir., Bureau of Indian Affairs, 49 IBIA 84, 111 (2009).^{1/} Plaintiff opines that this provision of tribal law does not cover the passing of resolutions to request that land be taken into trust on behalf of the tribe. However, the County provides no evidence to support this proposition. Nor is Plaintiff in a position to interpret tribal law, which was enacted by the Tribe for the purpose of

^{1/}The Tribe’s Constitution and amended by-laws are available on South Dakota’s Tribal Government Relations website, at www.state.sd.us/oiayankton.asp.

tribal self-governance. Whether the Committee has authority to act under tribal law is a question that only concerns the Tribe and that would need to be determined pursuant to the Tribe's legislative and judicial process. In fact, the Tribe itself has explained that passing resolutions to request trust acquisitions is exactly the type of duty that the Committee performs. (Plaintiff correctly points out that the United States made this statement in its Motion without including a citation. The Tribe's position on this issue is made clear in an amicus filing in Case No. 3:10-cv-3006, which is also before this court and involves several of the same parties. See Dkt. No. 17 and attachment.)

For the reasons stated above and in its previously filed Motion, the United States respectfully requests that the Complaint be dismissed for failure to state a claim, or, in the alternative, that the Court grant summary judgment in favor of Defendants.

Respectfully submitted this 15th day of September, 2010.

/s/ Amy S. Tryon

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